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Force Majeure Circumstances in the Contract: Information and Accounting Support

Abstract. Introduction. *The section of the contract on force majeure circumstances, which was previously treated quite formally or did not include such information at all, has become too relevant today for making further management decisions. These issues have an impact on the information and accounting provision of contractual relations, which has certain features depending on the periods of conclusion of contracts, which requires additional research and drawing up directions for improvement.*

Purpose. *The purpose of the study is to determine the concept and features of force majeure in contracts, in particular, during martial law and the formation of information and accounting support for making further management decisions in the event of force majeure.*

Results. *The article examines theoretical and practical approaches to the content of force majeure and normative aspects of its certification in contracts. A classification is presented regarding the management's information support about force majeure in contracts, which is useful for reflecting in debt accounting and monitoring contracts concluded as a result of public procurement. Outlines the main features of force majeure in contracts during martial law. It is substantiated that in accounting, an economic contract can act as a document, be a fact of economic activity that requires accounting. It has been proven that economic transactions related to the occurrence of obligations under contracts, including those containing force majeure circumstances, must be reflected in the accounting.*

Conclusions. *Information about force majeure must be contained in any contract, which must be duly executed. Such a contract will be a significant and influential factor for making effective management decisions, will help companies avoid paying fines or fines in case of non-fulfillment of contractual obligations. Force majeure circumstances do not automatically cancel contractual obligations. Therefore, accounting receivables and payables under such contracts must be reflected in the accounting records.*

Keywords: *contractual obligations; force majeure; information and accounting support; management decisions.*

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Форс-мажорні обставини у договорі: інформаційно-облікове забезпечення

Розділ договору про форс-мажорні обставини, який раніше трактувався досить формально або взагалі не зазначали такої інформації, став на сьогодні надто актуальним для прийняття подальших управлінських рішень. Зазначені питання мають вплив на інформаційне та облікове забезпечення договірних відносин, яке має певні особливості залежно від періодів укладання договорів, що вимагає додаткового дослідження та накреслення напрямів удосконалення. Метою дослідження є визначення поняття та ознак форс-мажорних обставин у договорах, зокрема під час воєнного стану та формування інформаційно-облікового забезпечення для прийняття подальших управлінських рішень у разі виникнення форс-мажорних обставин. У статті досліджено теоретико-практичні підходи до змісту форс-мажору та нормативні аспекти його засвідчення у договорах. Представлено класифікацію щодо інформаційного забезпечення управління про форс-мажор у договорах, яка є корисною для відображення в обліку заборгованості та моніторингу договорів, що укладають за результатами публічних закупівель. Окресленні основні особливості форс-мажорних обставин у договорах під час дії воєнного стану. Обґрунтовано, що у бухгалтерському обліку господарський договір може виступати документом, бути фактом господарської діяльності, що потребує обліку. Доведено, що господарські операції, пов'язані з виникненням зобов'язань за договорами, у тому числі, що містять форс-мажорні обставини, мають обов'язково відображатися в обліку. Інформація про форс-мажорні обставини має міститися в будь-якому договорі, який має бути відповідним чином оформленим. Саме такий договір буде вагомим і впливовим

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фактором для прийняття ефективних управлінських рішень, допоможе компаніям уникнути сплат пені або штрафу за умови невиконання договірних зобов'язань. Форс-мажорні обставини не скасовують автоматично зобов'язання за договором. Тому облік дебіторської та кредиторської заборгованості за такими договорами має обов'язково відображатися в бухгалтерському обліку з дотриманням таких принципів обліку, як періодичності, обачності, повного висвітлення.

Ключові слова: договірні зобов'язання; форс-мажор; інформаційно-облікове забезпечення; управлінські рішення.

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Formulation of the problem. The military aggression of the Russian Federation and the imposed martial law on the territory of our country caused a situation of non-fulfillment or partial non-fulfillment by business entities of their contractual obligations. There are many controversial issues where some economic entities have decided that, since the state of war is defined by force majeure, they have the opportunity to be released from fulfilling their obligations to counterparties, some economic entities believe that contractual obligations have be performed under any conditions and regardless of difficult circumstances, some business entities do not understand at all what to do with the fact of force majeure, even with contracts in hand, some business entities make additional efforts to improve contracts with the indication new circumstances of their activities.

Therefore, the section of the contract on force majeure circumstances, which was previously treated quite formally or did not include such information at all, has become too relevant today for making further management decisions. These issues have an impact on the information and accounting provision of contractual relations, which has certain features depending on the periods of conclusion of contracts, which requires additional research and development of areas for improvement.

Analysis of recent research and publications. Almost no attention is paid to the study of the peculiarities of the formation of contracts in the part of force majeure (circumstances of force majeure) in scientific works. In this direction, research takes place either from the side of legal sciences or international relations. We have to mention outstanding research by Zinchenko & Dubchak (2020), Mokienko, Priyda & Lipskyi (2019), Melnik (2016), Kochyna & Boldyreva (2022), who used the concepts of "force majeure" and "contract" in their works.

At the same time, considering the current economic conditions in our country, some gaps in the legislation on the certification of force majeure and the use of information about the fact of force majeure for making management decisions, there is a need for further research and the search for ways to improve the formation and improvement of information and accounting support making further management decisions in the event of force majeure. Moreover, the mentioned issue is considered mostly from the legal side, although these circumstances have a direct impact on the reflection in accounting, financial reporting, and the adoption of further management decisions.

Formulation of research goals. The purpose of the study is to determine the concept and features of force majeure in contracts, in particular, during martial law and the formation of information and accounting support for making further management decisions in the event of force majeure.

Outline of the main research material. Force majeure circumstances are those insurmountable circumstances that can interfere with the conduct of business activities. However, this is also something that can remove responsibility for non-fulfillment of the contract. Force majeure becomes especially relevant during natural disasters and war.

The concept of force majeure is quite often associated with the French Napoleonic Code, but this document does not contain its definition.

The legislation of Ukraine equates the concept of "force majeure" as an "irresistible force". Thus, the Civil Code of Ukraine (2003) does not use the concept of "force majeure". In the regulatory document, the concept of force majeure is defined as an extraordinary or unavoidable event under the given conditions. The Commercial Code of Ukraine (2003) does not contain the above-mentioned concepts at all, but only that "a participant in economic relations is responsible for the non-fulfillment or improper fulfillment of an economic obligation or violation of the rules of economic activity, if he does not prove that he has taken all measures dependent on him to prevent economic offense".

The Law of Ukraine "On Chambers of Commerce and Industry in Ukraine" (1997) calls force majeure circumstances (circumstances of force majeure) extraordinary and unavoidable circumstances that objectively make it impossible to fulfill the obligations stipulated in the terms of the contract (contract, agreement, etc.), obligations under with legislative and other regulatory acts, namely: threat of war, armed conflict or serious threat of such conflict, including but not limited to enemy attacks, blockades, military embargoes, actions of a foreign enemy, general military mobilization, hostilities, declared and undeclared war, acts of a public enemy, piracy, disorder, invasion, blockade, revolution, mutiny, uprising, mass riot, imposition of curfew, quarantine imposed by the CMU, expropriation, forced seizure, seizure of enterprises, requisition, public demonstration, blockade, strike, accident, illegal actions of third parties, fire, explosion, long interruptions in the operation of transport, regulated by the terms of relevant decisions and acts of state authorities, closure of sea straits, embargoes, prohibition (restriction) of

export/import, etc., as well as caused by exceptional weather conditions and natural disasters, and namely: epidemic, severe storm, cyclone, hurricane, tornado, flood, accumulation of snow, ice, hail, frost, freezing of the sea, straits, ports, passes, earthquake, lightning, fire, drought, subsidence and landslide, other natural disasters, etc. Such force majeure circumstances are divided into weather-natural circumstances; political and social; illegal actions; medical and social; state decision.

Some legislation of foreign countries contains the concepts of "force majeure" and (or) "circumstances of irresistible force" but does not contain their list. That is, each case is considered individually.

Thus, international practice most often uses Art. 79 of the Vienna Convention, according to which it is possible to release a party to the contract from liability for non-fulfillment of such a contract, if the following information is proven: it is impossible to control the obstacle due to which the non-fulfillment of the contract takes place; consideration of such an obstacle during the conclusion of the contract was unrealistic; finding a way to bypass such an obstacle or overcome it is impossible. It is up to the party to the contract who has breached or defaulted to prove this information.

Peculiarities of force majeure regulation in different countries are listed in Table 1.

Table 1. Some features of force majeure regulation in different countries

Country	Features
Great Britain	The list of force majeure circumstances is established by judicial practice. Natural disasters, military conflicts, export or import bans are immediately recognized as force majeure, but changes in the country's economic situation are never. There are three ways of terminating the contract without penalties: impossibility of performing the contract (impossibility); illegality of contract performance (illegality); "destruction" of the purpose of the contract (frustration of purpose). In any case, there must be an official statement from the Government.
USA	It is possible to apply force majeure only within the limits of a certain contract. If a contract is governed by US law and does not contain a force majeure clause, the parties to such a contract will not be able to invoke force majeure as a basis for exemption from liability. Or, if the contract specifies a list of force majeure circumstances, then force majeure can be recognized only within such circumstances.
Austria	Austrian notary offices, the police, partner companies have the right to certify force majeure circumstances (with a corresponding certificate-confirmation)
Netherlands	A significant list of entities that can testify to force majeure circumstances. This is a notary public, municipality or provincial governing body and others.

Source: formed by the authors using (Rvach, 2022)

Therefore, the main characteristics of force majeure according to Ukrainian legislation are as follows:

- emergency - they are not planned, they are not encountered in the daily activities of economic entities;
- unpredictability – their general list cannot be foreseen in the contract;
- inevitability – it's impossible to impact such circumstances, there's no possibility of changing them, even partially, there's no possibility of finding an alternative solution under such circumstances;
- objectivity – there is a direct connection between the circumstance and the consequences of a specific contract or obligation.

Considering the norms of the current legislation, the existence of force majeure circumstances in Ukraine in recent years (occupation of certain territories, pandemic, military aggression), a small number of scientific studies, the subject of which is the connection between force majeure and the contract, we have formulated our own definition of the concept of "force majeure in contractual obligations" and the factors affecting the information

support of management decisions in the event of force majeure are determined.

In our opinion, force majeure in contractual obligations is an extraordinary, unforeseeable, unavoidable, objective circumstance that affects the contractual obligations of a business entity from the outside only; which caused the non-fulfillment of a specific contract or a specific obligation under the contract; which must be certified in the appropriate manner for making further management decisions in order to stabilize economic activity.

Factors influencing the information support of management decisions due to the occurrence of force majeure are listed in Table 2.

Therefore, it is impossible to avoid the influence of force majeure circumstances, if there is a fact of their existence, but it is possible to reduce the negative consequences of such influence on the economic activity of the business entity by documenting the contractual relations properly and certificating the fact of force majeure.

Table 2. Factors influencing the information support of management decisions in the event of force majeure

Internal factors	External factors
Availability of a contract. Content of the contract. Information on the execution of the contract. Professional qualifications and experience of employees and management personnel. Experience in certification of force majeure and fulfillment of contractual obligations after such certification	Legislative regulation. Clarification of authorities and authorized bodies regarding the occurrence of force majeure. Judicial practice of resolving disputed issues. Understanding by the counterparty of force majeure

Source: generated by the authors

Using a sociological survey, we collected and processed information on the existence of contracts, the presence of information about force majeure in them, the degree of correspondence of such information to reality and the use of such information during the occurrence of a force majeure fact for making management decisions. Fifty-three responses were received, of which almost 85% of respondents have information about force majeure in their contracts. In 87% it includes general information about force majeure. More than half of the respondents had unfulfilled obligations due to force majeure. Almost all respondents noted the need for additional study of the issue and specification of information about force majeure in contracts.

The current conditions in which business entities of our country found themselves due to the introduction of martial law fully correspond to the definition of force majeure specified in the law.

For contractual obligations that arose before February 24, 2022, the circumstances of military aggression are extraordinary, unavoidable, and objective; are such as to prevent and make impossible the execution of some contracts within the established terms and according to other requirements. For contractual obligations arising after February 24, 2022, military aggression and martial law are not interpreted as force majeure, but this does not mean that such information may not be specified in contracts. On the contrary, having correctly noted the circumstances of force majeure in the contract, the business gets an opportunity to manage its obligations in an informational and normatively correct and economically safe manner.

The fact that the contract does not contain information about force majeure should form the basis of a management decision on formatting appropriate notification about the force majeure circumstances for those contracts, in respect of which there is no possibility of performance, and familiarization with such a notification specifically for each individual counterparty. The Chamber of Commerce and Industry does not include such a notice in the list of documents, so it can have an arbitrary form, but, in our opinion, it must necessarily contain information about the contract, references to the regulatory framework and current regulatory documents, a proposal to remove obstacles on the way to execution of the contract.

Each management decision must be based on the fact that force majeure is a reason for exempting responsibility for obligation breach, but not from the fulfillment of the obligation itself. The counterparty may be exempted from paying fines for breaching the terms of the contract, but not exempted from fulfilling the terms of the contract in general. Furthermore, this contract party is released from other liability measures, in particular, from the need to compensate for damages due to improper performance of contractual obligations. In our opinion, it is pertinent to sign an additional agreement, specifying all new circumstances or an agreement to terminate such an agreement.

Therefore, every management decision must have proper information provision of contractual relations, a part of which determines main features of force majeure (Table 3).

Table 3. Main features of force majeure in contractual relations during martial law

Feature	Content features
Circumstances that are not ordinary	Such circumstances have a special, exceptional character. They are beyond the influence of all parties to contractual relations.
Circumstances that are not foreseeable	It is certified as force majeure only in contracts concluded before February 24, 2022, according to the exceptional wording (item table 2).
Circumstances that cannot be corrected	Inevitability. Lack of an equivalent or alternative solution.
A direct connection (cause-effect) between circumstances or an event and the fact that it is not possible to fulfill a specific obligation	Any force majeure, including martial law, is a reason for non-fulfillment of an obligation, but not a reason for non-fulfillment in general.

Source: summarized and formed by the authors using (Kaghterman, 2022)

In the accounting system, an economic contract can act as a document, be a fact of economic activity that requires accounting, and in such cases, it can also be a primary accounting document.

Obligations in accounting, as an information system for the management of a business entity, arise not at the time of conclusion of the contract, but after one of the parties performs the actions (or inaction) provided for in the contract, because of which the receivables of one party to the other arise - obligation to settle this debt, which is called payable (Koblianska, 2007)

Receivables and payables or settlements are reflected in accounting as debts, payments, i.e., obligations to pay for actually supplied goods and services or services only. If we record the buyer's promise to pay, then the counterparty's promise to deliver the goods, which may also have a value, should be reflected in the accounting. In this case, we are talking about accounting for a bilateral promise - a contract. Provided that all components of a bilateral legal obligation are reflected in accounting, it is also accounted for accordingly (Petrik, 2012).

Recognising the fact that the contract non-fulfillment was due to force majeure does not remove the obligation at all. It just:

- removes the obligation to pay penalties under the contract: penalty, fine, interest, etc.;
- stops the running of the statute of limitations;
- may be grounds for terminating the contract if it provides for it.

Therefore, economic transactions related to the obligation's occurrence under contracts, including those containing force majeure circumstances, should be reflected in the accounts of analytical and synthetic accounting. Reflecting the company's obligations, as well

as the results of operations related to their occurrence, transformation, and termination, in the company's reporting requires compliance with such accounting principles as periodicity, prudence, full disclosure, which ensures an increase in the quality of accounting information regarding obligations enterprise, its completeness and comparability.

It should be noted that force majeure recognition can help with tax consequences:

- a tax debt can be written off in full if it arose as a result of force majeure (clause 101.2.4 of the Tax Code of Ukraine (2010). Even cancellation of a tax lien arising from such a debt;
- to write off tax fines and penalties, in particular for late submission of tax returns (clause 101.2.4 of the Code of Civil Procedure);
- it is possible to not pay the rent for the period of force majeure if the property could not be used by the tenant due to circumstances for which he is not responsible (Part 8 of Article 762 of the Civil Code);
- an agricultural enterprise can justify a violation of the share of 75% of agricultural products in the total turnover (the basis is paragraph 298.8.4 of the Code of Civil Procedure, which mentions the circumstances of force majeure).

We have classified contracts according to information about force majeure. Such a classification is useful for the informational provision of debt accounting and monitoring of contracts concluded because of public procurement (Table 4). Because the entire procurement process is accompanied by risks. They are especially large precisely at the stage of contract execution (Dubinina, Cheban, Syrtseva, Verkhovodov, 2022).

Table 4. **Proposed classification of contracts according to the presence of information about force majeure for the needs of information and accounting support**

Contracts			
Contracts that were signed before February 24, 2022		Agreements signed after February 24, 2022	
contracts that contain information about force majeure	contracts that do not contain information about force majeure	contracts that contain information about force majeure, where martial law is no longer force majeure because it has been put into effect and is a known fact	contracts that do not contain information about force majeure

Source: generated by the authors

Conclusions. Therefore, the economic obligation of the business entity must be contained in the contract, which must be appropriately drawn up, considering information about force majeure (circumstances of irresistible force). This type of agreement will be a significant and influential factor for making effective management decisions, especially during martial law.

Force majeure circumstances do not automatically cancel contractual obligations. Thus, accounting for

receivables and payables under such contracts must necessarily be reflected in accounting as debts, payments, i.e., payment obligations for actually delivered goods and services or provided services, etc.

The presented classification of contracts according to the information about force majeure should be useful for ensuring the reflection in debt accounting and monitoring of contracts concluded as a result of public procurement.

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